

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

JULIAN CHARTER SCHOOL, by and through
JULIAN UNION ELEMENTARY SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT

OAH CASE NO. 2012100043

PARENTS ON BEHALF OF STUDENT,

v.

JULIAN CHARTER SCHOOL, by and through
JULIAN UNION ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2012100933

ORDER DENYING OBJECTION OF
STUDENT TO THE DISMISSAL OF
CASE NUMBER 2001200043 WITHOUT
PREJUDICE

On October 1, 2012, the Julian Charter School, by and through the Julian Union Elementary School District (District) filed a due process hearing request (complaint) naming Parents on behalf of Student (Student) as respondents (and assigned case number 2012100043). On October 12, 2012, Student attempted to file a cross-complaint against the District. On October 22, 2012, the Office of Administrative Hearings (OAH) issued a letter informing Student's attorney that the pleading could not be processed as it lacked required information. On October 24, 2012, Student filed a pleading entitled "Amended Petition for Due Process, Motion for Consolidation, and Notice of Representation." OAH filed it as a new case and assigned it case number 2012100933. Both actions involve the appropriateness of the April 14, 2012 Individualized Education Program (IEP) offered to Student by the District. On October 30, 2012, OAH issued an order granting Student's motion to consolidate the two cases.

On December 31, 2012, the District filed a request to withdraw its complaint without prejudice. On January 2, 2013, Student filed an objection to the District's request. On January 8, 2013, the District filed a reply to Student's objection.

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address motions to withdraw complaints before, during, or after the commencement of a due process hearing. However, OAH may look by analogy to the Code of Civil Procedure, section 581, et seq., which addresses such

motions in the context of state civil proceedings.¹ Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial.

OAH has permitted a petitioner to withdraw their due process request without prejudice. (*Parent v. Julian Unified School District*, OAH Case No. 2012020570 (Order dated July 12, 2012.)

In the instant matter, the due process hearing has not commenced. Therefore, the District is entitled to withdraw its case without prejudice.

ORDER

Student's objection to the January 2, 2013 order to dismiss the District's complaint is denied.

Dated: January 10, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

¹ All further statutory references are to the Code of Civil Procedure.